IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 5739 of 2006(G)

AGAINST THE ORDER IN EP 23/2005 IN CS.35/2003 of SUB COURT, QUILANDY

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PETITIONES:

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1. **T.P. ABDUL MAJEED, S/O. AHAMMED KUTTY HAJI, AANAPPARA VEETTIL UNNIKULAM, QUILANDY.**

2. **T.P. ABDUL RAHIMAN, S/O. AHAMMED KUTTY HAJI, AANAPPARA VEETTIL, UNNIKULAM, QUILANDY.**

BY ADV. SRI.V.V.ASOKAN
SMT.S.LAKSHMY

RESPONDENT:

SOUTH MALABAR GRAMEEN BANK LTD., REPRSENTED BY ITS MANAGER, UNNIKULAM, QUILANDY.

BY ADV. SRI.T.R.RAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.5739/2006 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENT CONTAINING THE PROCEEDINGS OF THE COURT.**

EXT.P2: **COPY OF THE OBJECTION FILED BY THE PETITIONERS TO ORDER 21 RULE 66 NOTICE DTD. 14/11/2005.**

EXT.P3: **COPY OF THE PROPERTY TAX RECEIPT EVIDENCING THE OWNERSHIP OF THE HOUSE WITH THE PETITIONERS' MOTHER.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.5739 of 2006

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Dated: 29th June, 2007

JUDGMENT

The prominent grievance of the writ petitioners who are judgment-debtors in a mortgage decree obtained by the respondent-Bank is that the execution court has now ordered sale of the entire decree schedule property while as a matter of fact sale of a portion of the property will suffice for discharging the decree debt. Noticing the above contention this court while admitting the Writ Petition directed the petitioners to deposit a sum of Rs.One lakh within seven days from 27.2.2006 as a condition for granting stay. Later on 20.3.2006 a further condition was imposed that a further amount of Rs.One lakh shall be deposited within 30 days. It is not disputed that both the above conditions have been complied with by the petitioners promptly.

2. Having regard to the rival submissions and the grounds raised in the Writ Petition, I am of the view that the Writ Petition can be disposed of by issuing the following directions:

The order of stay presently granted will continue for another six months from today. It is open to the petitioner to identify a purchaser for any portion of the decree schedule property in the meanwhile.

Once a purchaser is identified, the concurrence of the respondent-Bank will be sought for. Even if the respondent-Bank does not grant concurrence, the petitioners will file an application before the court below producing copy of the agreement entered into with the prospective purchaser and seek permission of the court for sale of the property covered by the agreement. The court below will consider that application and pass appropriate orders with notice to the respondent-Bank and thereby facilitate payment of the entire balance decree debt by the prospective purchaser so that the decree is fully satisfied. The whole exercise shall be completed within six months of the petitioners producing copy of the judgment. The stay order, at any rate, will not continue beyond the period of six months period mentioned above.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**